IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1834 OF 2000

Muralilal Ramharak Gupta. ...Petitioner.

Versus

M/s.India Link Chain Manufacturers Ltd. ...Respondents.

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Mr. Vinod Thakar with Mr.Bhavesh Parmar for the Petitioner.

Mr. R.S. Pai with Mr.Sanjay Udeshi for Respondent No.1.

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CORAM : DR. D.Y. CHANDRACHUD, J.

31st January 2005.

P.C.:

On a reference under Section 10 of the Industrial Disputes Act, 1947, the Labour Court has on 24th April 1995 come to the conclusion that the enquiry that was conducted against the Petitioner

was fair and proper. On 3rd February 2000, the Labour Court has held that the finding arrived at by the Enquiry Officer was not perverse. By its final award dated 10th April 2000, the Labour Court rejected the reference holding that the punishment was not shockingly disproportionate to the finding of misconduct against the Petitioner. These findings of the Labour Court have been challenged before the Court in these proceedings.

On 17th January 1983 a chargesheet was issued to the Petitioner in which it was alleged that on 11th November 1982, the Petitioner was on duty in the third shift between 11 p.m. and 7 a.m. The allegation against the Petitioner was that though he was to be on duty only in the third shift, he entered the factory premises at about 2.30 p.m. together with certain other workmen and led, encouraged and instigated the workmen to assemble the Commercial office at 2.45 p.m. The workmen are alleged to have staged rowdy demonstrations in the Commercial Office and to have encouraged other workmen from the factory to participate in demonstrations. The

Petitioner is also alleged to have led a morcha in the Commercial office around 3 p.m., in which abuses and filthy slogans were used between 3 p.m. and 5.30 p.m. The Petitioner was alleged to have uttered filthy and abusive slogans against the managerial staff and to have gheraoed the managerial staff by encouraging and instigating other workmen until 5.30 p.m., when the police intervened to rescue the management. The second allegation was that on 3rd January 1983, the Petitioner came to the City Office of the First Respondent without permission and threatened and intimidated senior officers who were working there and asked them not to report for work at the office, failing which they would have to face dire consequences. The chargesheet alleged that the Petitioner committed misconduct under Model Standing Orders 24(k) and 24(l). MSO 24(k) inter alia deals with riotous, disorderly and indecent behaviour on the premises of the establishment. MSO 24(l) deals with the commission of any act subversive of discipline and good behaviour on the premises of the establishment.

The Petitioner in his reply dated 28th January 1983 to the chargesheet alleged that a false charge had been levelled against him since he was a member of the Committee of the Association of Engineering Workers. The Petitioner denied the allegations and contended that an attempt was being made to victimise him for his union activities.

An enquiry was convened and a notice of enquiry was issued on 3rd February 1983. In response, Dr.Datta Samant, the President of the Union stated in a letter dated 14th February 1983 that the Company had illegally declared a lock out on 15th November 1982 thereby depriving the workmen of the payment of subsistence allowance that would have been payable to them during the proceedings of the enquiry. In that letter, it was also stated that the workmen were being summoned to attend the enquiry proceedings at the City Office of the Company situated at Mumbai Samachar Marg which is far away from the residence of the workmen. Dr.Datta Samant further stated in his letter that it was not possible for the

workmen to attend the enquiry proceedings since the factory was situated at Bhandup and the enquiry was being conducted at the Bombay Office. It was stated that the workmen would have to bear travelling expenses without wages which would lead to severe hardship and that consequently, the management should defer the enquiry until the lock out was lifted.

On 21st February 1983, the First Respondent replied to the letter dated 14th February 1983 and recorded that in the notices of enquiry dated 31st January 1983 and 15th February 1983, the management had mentioned clearly that the workmen would be paid travelling allowance in order to enable them to participate in the enquiry. Moreover, it was stated that the notice of enquiry dated 15th February 1983 was also published in 'Navshakti' and 'Navbharat Times' in which it was also mentioned that the workmen would be paid travelling expenses to attend the enquiry. The request made by the President of the Union for postponing the enquiry until the lifting of the lock out was rejected. On 22nd February 1983, the President of

the Union wrote another letter to the management recording that on 15th February 1983, the management had again intimated to the individual chargesheeted workmen that they should attend the enquiry on 25th February 1983 at the City Office. The President reiterated his request for adjournment of the enquiry. The Enquiry Officer proceeded with the enquiry. The Petitioner remained absent and did not participate. The Enquiry Officer submitted his report on 12th March 1983, after recording evidence, that the finding of misconduct was established. On 11th April 1983, an order of dismissal was passed against the Petitioner by the disciplinary authority.

A reference to adjudication was made in 1983 to the Labour Court. The Labour Court came to the conclusion that the enquiry was fair and proper; that the findings that were arrived at were not perverse and that the punishment which was awarded was not shockingly disproportionate in its award dated 24th April 1995, 3rd February 2000 and 10th April 2000.

In assailing the findings that were arrived at by the Labour Court, four submissions have been urged on behalf of the Petitioner: (i) The lock out which was declared by the management was illegal. Consequently, the Petitioner is entitled to the payment of subsistence allowance. In the absence thereof, the enquiry must be held to have been vitiated; (ii) The finding of the Labour Court that there was no breach of the principles of natural justice is in error since the letter of the Union dated 14th February 1983 to postpone the enquiry until the lock out is lifted was not considered; (iii) After receipt of the report of the Enquiry Officer, an opportunity to show cause against the findings and against the proposed penalty ought to have been furnished to the workmen in the absence whereof, the action of the disciplinary authority will stand vitiated; and (iv) The appreciation of evidence by the Labour Court suffers from perversity, the defence of the Petitioner being that he was not present at the time when the incident took place. Moreover, it was submitted that the Petitioner alone has been proceeded against in the disciplinary proceedings and has been subjected to discrimination.

In so far as the first submission is concerned, it is common ground, that a lockout was declared, which remained in force for a period of 11 months from 2nd December 1982 till 29th August 1983. The submission of the Petitioner before the Court is that the lockout was illegal and in which event, the Petitioner would be entitled to the payment of wages or, as the case may be, to subsistence allowance during the period of lockout. Section 23 of the Industrial Disputes Act, 1947, inter alia contains a general prohibition on the declaration of lockouts: (i) during the pendency of conciliation proceedings and seven days thereafter; (ii) during the pendency of proceedings before a Labour Court or Tribunal and two months after the conclusion thereof; (iii) during the pendency of arbitration proceedings and two months after the conclusion thereof; and (iv) during any period in which a settlement or award is in operation in respect of any of the matters covered thereby. Admittedly, none of these clauses of Section 23 are attracted in this case. Similarly, under sub-section (1) of Section 24, a lock out shall be illegal if (i) it is commenced or

declared in contravention of Section 22 or Section 23 or (ii) it is continued in contravention of an order made under sub-section (3) of Section 10 or sub-section (4A) of Section 10A. Admittedly these provisions of Section 24(1) are not attracted. Nor for that matter is Section 22(2) of the Act which deals with a lockout in a public utility service applicable. That apart, absolutely no material is brought on the record by the Petitioner in support of the submission that the lockout in the present case was illegal. In that view of the matter, there is no merit in the first submission.

In so far as the second submission relating to an alleged breach of the principles of natural justice is concerned, it would be material to recapitulate some of the admitted facts. A chargesheet was issued to the Petitioner on 17th January 1983 pertaining to alleged acts of misconduct on 11th November 1982 and on 3rd January 1983. The Petitioner responded to the chargesheet and submitted his reply on 28th January 1983. On 3rd February 1983, a notice of enquiry was furnished by the management to which on 14th February 1983

there was a reply by Dr.Datta Samant who was the President of the Association of Engineering Workers. The reply sought a deferment of the enquiry until the lockout was lifted allegedly on the ground that the factory was situated at Bhandup and that it was not convenient to the workmen to travel to the City Office where the enquiry was being held. On the record of the enquiry proceedings, a copy of the letter dated 21st February 1983 sent by the management by Registered Post to the President of the Association of Engineering Workers was produced, in which it was stated that the workmen would be paid travelling expenses as may be directed by the Enquiry Officer for participating in the enquiry proceedings. A reference was also made therein to the fact that the notice of enquiry had been published in the newspapers wherein it was mentioned that the workmen would be paid traveling expenses for attending the enquiry. The Labour Court has noted that initially an intimation was posted to the workman to remain present on 15th February 2003 for enquiry. The workman was absent and the Enquiry Officer adjourned the enquiry for which a fresh intimation was issued to the workman to remain present on 25th

February 1983. The workman again remained absent, upon which the enquiry proceeded ex-parte. The Labour Court arrived at the finding that an intimation was issued to the Petitioner to remain present, that in fact, the Association of Engineering Workers had responded to the notice of enquiry and that there was also a publication in the newspapers. Besides these circumstances, it is also clear from a letter dated 22nd February 1983 which is on the file of the record before the Enquiry Officer that the President of the Union had acknowledged the intimation that was furnished to the workman to attend the enquiry on 25th February 1983. Though the management had on 21st February 1983 declined to accede to the request to adjourn the enquiry until the lock out was lifted and had furnished an assurance in regard to the payment of travelling allowance, the President of the Union persisted with the same request.

In **Yashwant Gangaram Pandav vs. Asea Brown Bowery Ltd**, 1996 I CLR. 221, the chargesheeted workmen gave a

memorandum that they were unable to participate in the enquiry unless their demand for transportation charges for attending the enquiry, lunch etc. were granted. The enquiry proceeded ex-parte and before a Learned Single Judge of this Court, the submission was that the enquiry was vitiated. Mr.Justice B. N. Srikrishna (as the Learned Judge then was), rejected the submission and held that there was no provision in law or any provision under the applicable rules and regulations, contract or Standing Orders under which employer was bound concede to these demands. The Learned Judge held that "the workmen could not make the conceding of the said demands a condition precedent to attend the inquiry and, conversely, if the workmen refused to attend the inquiry by making a non-issue a condition precedent, they must take the consequences". (para 11 at p.225). Much the same position obtains in the present case. In the background of the incident which had taken place, the decision of the management to hold the enquiry at the City Office could not be faulted. Though the factory was situated at Bhandup, holding an enquiry in the City Office cannot be held to vitiate the

enquiry. The management had conceded to the demand for payment of travelling allowance to meet the expenditure incurred by the workmen in traveling to the City Office. In these circumstances, the finding of the Labour Court that there was no breach of the principles of natural justice cannot be faulted.

In so far as the third submission is concerned, it must be noted that in the present case, a chargesheet was issued on 17th January 1983, the report of the Enquiry Officer was dated 12th March 1983 and the order of dismissal was of 11th April 1983. In **Managing Director ECIL Hyderabad vs. B. Karunakar,** 1993 II CLR 1129, a Constitution Bench of the Supreme Court held that the law laid down in **Union of India vs. Mohd. Ramzan Khan,** (1991) 1 SCC 588 is prospective. In its decision in **ECIL,** the Supreme Court observed thus:

> "As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was

no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case (supra) without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account."

The judgment of the Supreme Court is clearly an answer to the third submission.

Finally, in so far as the appreciation of evidence is concerned, the Court must have due regard to the fact that in these proceedings, the Court is called upon to exercise its supervisory jurisdiction under Articles 226 and 227 of the Constitution in regard to a finding of fact arrived at by the Labour Court. The restriction on the exercise of this jurisdiction is well settled. This Court would not be justified in reappreciating the material or evidence and in substituting its own finding for the findings of the Lower Court. In **USV Ltd. vs. Maharashtra General Kamgar Union,** 1997 II CLR. 312, Mr.Justice R. M. Lodha speaking for the Court relied upon several decisions of the Supreme Court including the decision in **Christian Medical College Hospital Employees' Union & Anr. vs. Christian Medical College, Vellore Association & Ors.,** AIR 1988 SC 37 to hold that even the power given to the Labour Court or Industrial Tribunal in

Section 11A of the Industrial Disputes Act, 1947 is not in the nature of an unruly horse and cannot be exercised as an appellate forum over the finding given by the disciplinary authority. The Court held that if the disciplinary authority has awarded punishment of dismissal or discharge commensurate with the gravity of the offence which has been duly proved in the enquiry; and neither are the enquiry proceedings vitiated by any error of law nor do the findings on the gravity of the charge suffer from any error; and the award of punishment is commensurate with the gravity of charge, the Labour Court or Industrial Tribunal cannot substitute its own view for that of the disciplinary authority. The Court held that the jurisdiction of the Labour Court or of the Industrial Tribunal, under Section 11A though very wide is yet not as wide as the jurisdiction of an appellate forum.

The Labour Court has duly considered the evidence which was recorded in the course of enquiry. The first witness of the management, P.K. Nevatia deposed before the Enquiry Officer that as the Chief Executive of the Company, he was making his rounds of the

factory and found that workers were not at their places of work. The Company was negotiating with the Association of Engineering Workers led by Dr.Datta Samant on the demand for Bonus for the year 1981-82 and had agreed to pay 20% bonus on gross salary/wages. This offer was given by the Company though it was running in losses during the particular period. The President of the Union, however, insisted on cash gift along with bonus. At 2.30 p.m., he heard a commotion and the Vice President of the Factory informed him that a group of persons including the Petitioner was instigating the workers to gather in the Commercial Office to gherao the management and the officers. The workers were using filthy and abusive language. Among the other witnesses, Jagdish Khemka deposed that the Petitioner was one of those who was indulging in slogans and using abusive language against the management as well as the officers. S.P. Upadhyay, the Vice President of the Company deposed that at 2.30 p.m., on 11th November 1982, the workers were abusing him and his family in filthy language. Witness Pawar stated that the Petitioner who was working in the Processing Department,

suddenly rushed to the office and started threatening the Officers. In so far as the incident of 3rd January 1983 is concerned, witness N. D. Chapekar deposed that the Petitioner had rushed into the office towards the officers and had threatened them. On this material the Labour Court held that the finding of misconduct were established. This is clearly, therefore, not a case where there is no evidence. There was sufficient material to sustain the charge of misconduct. The Labour Court, therefore, has not committed any error in holding that there was no perversity in the finding.

The charge of misconduct against the Petitioner is a serious charge. The Petitioner led a group of workers to disturb the normal working at the work place. The managerial staff was gheraoed. In the course of the incident which took place, the Petitioner was one among those who used abusive and filthy language against the managerial staff. On this finding of misconduct, the punishment of dismissal cannot be regarded as disproportionate. No case of discrimination has been made out.

The Court has been informed that by Counsel for the First Respondent the factory of the First Respondent has since closed down. During the pendency of these proceedings, the Court had suggested to Counsel for the parties to explore the possibility of an amicable settlement to the dispute particularly since in Writ Petition No.756 of 2004 (Bharatiya Kamgar Karmachari Mahasangh Vs. Indian Link Chain Manufacturers Ltd.) Consent Terms were arrived at between the parties therein to govern the other workmen of the First Respondent. Counsel appearing on behalf of the Petitioner stated that the Petitioner is not agreeable to the offer made by the management. In the circumstances, the Petition has been heard on merits.

For the aforesaid reasons, I have come to the conclusion that the award of the Labour Court did not suffer from any perversity. The interference of the Court in the exercise of its jurisdiction under Article 226 of the Constitution is not warranted. There is no merit in

the petition which is accordingly dismissed. No order as to costs.

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